REMARKS

In the Office Action mailed October 5, 2009, the Examiner pointed out that the Substitute Specification submitted on November 12, 2008, had in the "Summary of the Invention" section language that was not present in the initial Claims 7-12 that were filed with the application on September 1, 2004, which Applicant was seeking to incorporate into the Substitute Specification. Applicant is enclosing herewith a New Substitute Specification in which the language not found within original Claims 7-12, which were meant to be segways, only, have been removed. Applicant's counsel again asserts affirmatively under 37 CFR §1.125(b) that the new Substitute Specification includes no new matter.

Claim 11 was also objected to because of the noted informality that it contained a misspelling of the word "mechanical," which by the foregoing proposed claim amendments has been corrected.

Turning now to the claim rejections over prior art, in the Office Action mailed October 5, 2009, Claims 7-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Sonoma Sausage, Hans Drexel (DE 100 65 633 A1 German document and abstract) and Maruschke et al. (EP 0 505 797 B1). Applicant traverses this basis for rejecting the claims of the Application for the reasons that follow.

The Examiner considers Domazakis as being the closest prior art, since this reference teaches a method for preparing meat-based products, and since olive oil instead of animal fat is therein incorporated by method steps that are similar to the method steps of the claimed invention.

However, Domazakis does not disclose any kind of added cheese, let alone feta cheese pieces, but rather only mentions the addition of milk protein.

Further, Domazakis does not disclose the use of a citrate salt, and only polyphosphoric salts are mentioned.

Thus, there is no motivation in Domazakis to incorporate pieces of feta cheese into the meat-based product disclosed therein. The Examiner argues on page 6 of the present Office Action that a person ordinarily skilled in the art "would have been motivated to add feta cheese at least to provide an additional protein source and also provide flavor variety in the meat product." The motivation for the person ordinarily skilled in the art to do so does not come from Domazakis, nor from either Drexel or Sonoma Sausage, as argued by the Examiner.

Drexel discloses a low fat meat product, such as sausages that contain both fresh cheese products (10 - 75 %) and skimmed milk powder (0.8 – 2.0 %).

The term "fresh cheese," according to Drexel, comprises cream cheese (Frischkaese), farmer's cheese (Speisequark) and cotton cheese (Huettenkaese) (see column 2, lines 38 - 43 of the Drexel reference). According to claim 10 of Drexel, soft cheese (Schmelzkaese) may also be used. The Examiner states that the person ordinarily skilled in the art would be motivated by Drexel to modify the method as taught by Domazakis to include the addition of a soft cheese, which the Examiner said included feta cheese. The Examiner is reminded that according to the present invention's disclosure feta cheese is not a soft cheese but is rather a semi-salted cheese with high acidity (page 2 of the original application, line 34), and is a solid cheese and may not be confused with or substituted for the soft cheeses as mentioned in Drexel (see page 4 of the original application, lines 31 to page 5, line 9). Additionally, Drexel does not mention any vegetable oils in its meat product, let alone olive oil. Therefore, there is no motivation within Drexel to combine olive oil and feta cheese pieces into a meat product.

With respect to the term "cheese as pieces," the Examiner refers to Maruschke. However, this reference does not disclose the incorporation of cheese into a meat product but rather the

mixture/combination of pieces of meat with pieces of cheese (claim 1). This mixture is not emulsified, mixed or in any way treated so that an emulsion from a fat-free pulp at low temperature is formed (compare claim 7(a) of the present application). In contrast, Maruschke discloses the physical combination of meat pieces and cheese pieces in a plastic bag that is then cooked in order to melt the ingredients and combine them when the mixture is cooled. This reference discloses an entirely different process and there is absolutely no motivation within Maruschke to combine the meat/cheese mixture with olive oil.

The Examiner states on page 8, second paragraph, of the Office Action that the court ruled that "in all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function."

The ingredient "a citrate salt" is the selected ingredient which establishes the coaction and the cooperative relationship between olive oil and feta cheese pieces, since it mediates the stable corporation of the two destabilizing factors, namely the olive oil and the feta cheese pieces, in the meat-based product.

None of the prior art references of record mentions the presence of a citrate salt.

The citrate salt leads (among other factors like the adjustment of method parameters) to a new, unexpected result, i.e., a meat product with olive oil and feta cheese pieces incorporated at low temperature, and which forms an emulsion at low temperature without the application of heat in order to form the emulsion (compare steps (a) - (d) of independent claim 7 and steps (a) - (c) of independent claim 11).

For all these foregoing reasons, Applicant respectfully requests entry of the foregoing amendments to the claims, reconsideration of the present application in light thereof and in light of the foregoing remarks, followed by an allowance of claims 7-12, as amended, over all the

prior art of record. Upon the allowance of claims 7-12, as amended, over all the prior art references of record, Applicant will tender an appropriate terminal disclaimer to overcome the provisional non-statutory obviousness-type double patenting rejections imposed in the Office Action mailed October 5, 2009.

Respectfully submitted,

By: _____

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